STATE OF MICHIGAN

COURT OF APPEALS

WARREN M. ROBERTSON, JR., Plaintiff-Appellee,	UNPUBLISHED July 26, 2007
v	No. 263067 WCAC
DAIMLERCHRYSLER CORPORATION, Defendant-Appellant.	LC No. 02-000399

Before: Wilder, P.J., and Kelly and Borrello, JJ.

PER CURIAM.

Defendant DaimlerChrysler Corporation appeals, by leave granted, an order of the Worker's Compensation Appellate Commission (WCAC) which reversed a magistrate's denial of benefits for an alleged mental disability. We affirm.

I. Facts and Procedural History

Plaintiff Warren M. Robertson, Jr., began working for defendant in 1973. He worked in various positions on defendant's assembly lines. While working on the assembly line in the paint department in 1984, he began to paint designs on the back of coveralls worn by the workers. Someone in management noticed his work, and he was transferred to the Product Quality Improvement (PQI) department as a full-time artist.

In early 1994, George Asher became plaintiff's supervisor in the PQI department. According to plaintiff, Asher began "needling" him to retouch eagles that were painted on Asher's boat and attempted to send plaintiff, on company time and in a company vehicle, to work on his boat. Plaintiff asserted that he refused to work on Asher's boat on company time and that, as a result, Asher disliked him. Another PQI artist, Al Sipes, testified that Asher asked him to paint some pictures of eagles in his spare time. Sipes admitted that he might have done some of the painting on company time. Alfred Black, the chief steward of the paint shop, observed Sipes adding paint to a drawing of an eagle on company time. Black took the picture to labor relations and asked why Sipes was performing such work on company time.

In February 1995, not long after Black saw Sipes working on the eagle painting and reported it to labor relations, Asher told plaintiff that he and Sipes were no longer assigned to the PQI department and that they were being transferred back to their previous departments. Sipes asserted that he was taken back at being returned to the assembly line and that he was

"destroyed." He also asserted that he assumed he was being returned to the line as punishment for painting the eagles on company time. Plaintiff testified that when he learned that he was being returned to the line, he "lost it" and that he and Asher exchanged harsh words. Asher claimed that plaintiff backed him into a corner with a 2 x 2 piece of wood and threatened him and his family. Plaintiff left work after this incident. According to plaintiff, when he returned to work a few days later, his office was padlocked and security escorted him from the premises. Plaintiff was under the impression that he had been fired; in fact, he had merely been suspended for five days for abusive language and disorderly conduct. Nevertheless, plaintiff never returned to work. Sipes continued to work for defendant and was returned to the PQI department as an artist three or four months later.

On February 13, 1995, plaintiff was admitted to a hospital because he was out of control. He asserted that if he had not received help, he "would probably have killed someone." After he was released from the hospital, he saw a therapist on an out-patient basis. He voluntarily readmitted himself into the hospital on June 20, 1995, because he was having suicidal thoughts and was thinking about killing someone at the plant. According to plaintiff, he has not worked since then, and he stated that he can no longer return to work for defendant or elsewhere because he is a "time-bomb waiting to go off."

According to Frank Slaughter, the plant manager, the artist positions in the PQI department, as well as other positions in the PQI department, were "nonstandard," meaning that there was no requirement for an artist on the personnel chart. Slaughter asserted that he decided that the plant could not afford to fill "nonstandard" positions after the launch of a new vehicle line in 1994 exceeded projected costs. Therefore, he reassigned artists in the PQI department, as well as other "nonstandard" positions in the PQI department, back to the assembly line. According to Slaughter, the decision to reassign the "nonstandard" positions back to the assembly line was purely a business decision and he did not consult with Asher in making the decision.

In August 1995, plaintiff filed a claim for worker's compensation benefits for a mental disability under MCL 418.301(2). MCL 418.301(2) provides, in relevant part: "Mental disabilities . . . shall be compensable if contributed to or aggravated or accelerated by the employment in a significant manner. Mental disabilities shall be compensable when arising out of actual events of employment, not unfounded perceptions thereof." The magistrate determined that plaintiff failed to establish a compensable mental disability under the statute. According to the magistrate, plaintiff did suffer from a mental condition, but it was the result of plaintiff's misperception that he was transferred back to the assembly line for retaliatory purpose, and not the result of actual employment events. Therefore, the magistrate concluded that the actual employment event could not be seen as significantly contributing to, or aggravating, plaintiff's mental condition.

The WCAC initially affirmed the magistrate's denial of benefits. This Court vacated the WCAC's decision, holding that whether plaintiff misperceived the reason for his transfer was

irrelevant.[1] Our Supreme Court then vacated this Court's decision in a published opinion. *Robertson v DaimlerChrysler Corp*, 465 Mich 732; 641 NW2d 567 (2002). The Supreme Court acknowledged that this Court's reasoning was consistent with a prior Supreme Court decision, *Gardner v Van Buren Pub Schools*, 445 Mich 23; 517 NW2d 1 (1994), rev'd in part 465 Mich 732 (2002), but asserted that *Gardner* was wrongly decided in that its holding was inconsistent with the plain language of MCL 418.301(2). The Supreme Court stated in *Robertson*:

> Thus, in applying the proper statutory test, the factfinder must first determine whether actual events of employment indeed occurred. Then, in analyzing whether a claimant's perception of the actual events of employment had a basis in fact or reality, i.e., the claimant's perception was "founded", the factfinder must apply an objective review by examining all the facts and circumstances surrounding the actual employment events in question to determine whether the claimant's perception of such events was reasonably grounded in fact or reality. [*Robertson*, *supra* at 755.]

The Supreme Court remanded the matter to the magistrate "for analysis under the proper statutory framework." *Id.* at 763.

Following the remand from our Supreme Court, the magistrate and the WCAC each issued multiple decisions. The relevant portions of those decisions are detailed below in the analysis section of this opinion, and it is unnecessary to undertake a detailed description of all of the magistrate's and WCAC's rulings here. Suffice it to say that the magistrate maintained its position that plaintiff failed to establish a mental disability under MCL 418.301(2), and the WCAC ultimately reversed the magistrate's decision, finding that there was a direct correlation between plaintiff's employment and his mental condition, that plaintiff's perception of the work events was not unfounded, that the work events were more significant contributing factors than any nonwork-related circumstances, and that plaintiff was entitled to benefits.

II. Standard of Review

The WCAC must review the magistrate's decision under the "substantial evidence" standard, while this Court reviews the WCAC's decision under the "any evidence" standard. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 709; 614 NW2d 607 (2000). Review by this Court begins with the WCAC's decision, not the magistrate's. *Id*. The factfinding of the WCAC is final and subject only to limited judicial review. *Id.* at 701. If there is any evidence supporting the WCAC's factual findings, and if the WCAC did not misapprehend its administrative appellate role in reviewing the magistrate's decision, then this Court should treat the WCAC's factual findings as conclusive. *Id*. at 709-710. This Court reviews questions of law in any WCAC order under a de novo standard. *DiBenedetto v West Shore Hosp*, 461 Mich 394, 401; 605 NW2d 300 (2000). A decision of the WCAC is subject to reversal if it is based on erroneous legal reasoning or the wrong legal framework. *Id*. at 401-402.

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[1] *Robertson v Chrysler Corp*, unpublished order of the Court of Appeals, issued January 11, 2000 (Docket No. 222363).

III. Analysis

Defendant first argues that in determining whether plaintiff's perception was "founded," the WCAC improperly focused only on facts known to plaintiff (plaintiff's subjective knowledge) rather than engaging in the required objective analysis. We conclude that the WCAC's factual findings were supported by the requisite "any evidence" and that the WCAC's legal analysis was proper.

According to the Supreme Court's opinion in *Robertson*, to satisfy MCL 418.301(2), a claimant must demonstrate "that there has been an actual employment event leading to his disability" and "that the claimant's perception of such actual employment event was not unfounded . . . ." *Robertson*, *supra* at 752-753. A claimant's perception is "founded" if "such perception or apprehension was grounded in fact or reality, not in the delusion or the imagination of an impaired mind." *Id.* at 753. "[I]n determining whether there has been an actual employment event leading to a mental disability, and a perception of that event that is not unfounded, the inquiry must be conducted under an objective standard." *Id.* at 754. Furthermore, "the factfinder must assess the factual circumstances in terms of how a reasonable person would have viewed them." *Id.* at 755.

In this case, an actual employment event occurred in that plaintiff was transferred from his position as an artist in the PQI department back to the assembly line. The next inquiry is whether plaintiff's belief that his transfer was retaliatory was not unfounded, or, to eliminate the use of the double negative, whether plaintiff's belief that his transfer was retaliatory was founded. Plaintiff apparently contends that he was transferred because he refused to do personal work for Asher on company time. The facts surrounding plaintiff's transfer are as follows. Asher asked plaintiff to do some painting on his boat and insisted that the work be done on company time; plaintiff refused to do the work on company time. Sipes, however, agreed to complete some personal painting for Asher and admitted that he did at least some of the work on company time. Plaintiff and Sipes were both transferred from their artist positions in the PQI department back to the assembly line. The transfer occurred days after the chief steward of the paint shop observed Sipes doing personal paint work for Asher, took the work to labor relations and inquired why Sipes was performing such work on company time. Despite the timing of plaintiff and Sipes' transfer back to the assembly line, Slaughter, the plant manager, testified that plaintiff and Sipes were transferred purely for business and economic reasons.

In order to determine whether a plaintiff's perception was reasonably grounded in reality, the "factfinder must apply an objective review by examining all the facts and circumstances surrounding the actual employment events in question . . . ." *Id.* Viewing all the facts objectively, there is factual support for the WCAC's conclusion that plaintiff's belief that his transfer was related to his refusal to paint Asher's boat on company time was founded. Given the fact that Asher asked both plaintiff and Sipes to do personal work for him and given the short time period that elapsed between the time Black discovered that Sipes was doing personal work for Asher and reported this fact to labor relations and plaintiff's and Sipes' transfer back to the assembly line, plaintiff's perception that his transfer was related to Asher's request for him to do personal work for him was not unfounded. The fact that Sipes, who actually agreed to perform the personal painting for Asher and admitted that he did some of the work on company time, was also transferred does not merit a contrary conclusion. In this regard, it is significant that Sipes also believed that his transfer back to the assembly line was the result of Asher asking him to do

personal work for him and specifically, as punishment for painting the eagles on company time. Sipes' belief that his transfer was related to his personal work for Asher on company time further underscores that plaintiff's belief regarding the reason for his transfer was not unfounded. Asher asked both plaintiff and Sipes to do personal work for him on company time, and the timing of the transfer of both plaintiff and Sipes back to the assembly line shortly after Black discovered Sipes doing personal work for Asher on company time underscores the reasonableness of both plaintiff's and Sipes' belief that their transfers were related to Asher asking them to do personal work for him on company time. Thus, there is "any evidence" to support the conclusion that both plaintiff's and Sipes' belief that their transfer was related to Asher's request that they do personal work for him on company time.

In reversing the decision of the magistrate, the WCAC stated that there was no record support for the finding that plaintiff was aware or should have been aware that the plant was not doing well financially and, consequently, that he was aware that he was being demoted for economic reasons. Defendant contends that these conclusions reveal that the WCAC improperly applied a subjective inquiry into whether plaintiff's perception was reasonably grounded in fact or reality in contravention of our Supreme Court's holding in *Robertson*. This is not the case. In *Robertson*, our Supreme Court stated that "the factfinder must apply an objective review by examining all the facts and circumstances surrounding the actual employment events . . . ." *Id.* at 755. Slaughter testified that plaintiff and Sipes were transferred purely for business reasons because their positions were "nonstandard" and the plant could not afford to fill "nonstandard" positions after the launch of a new vehicle line in 1994 exceeded projected costs. Whether plaintiff was aware of the financial implications of the new vehicle launch problems and the financial condition of the plant are factors to be considered in determining whether plaintiff's perception was reasonably grounded in fact or reality. We reject defendant's contention that by considering plaintiff's awareness or lack thereof of the financial condition of the plant, the WCAC improperly applied a subjective analysis in violation of *Robertson*. Plaintiff's awareness of any financial problems in the plant was simply one of many factors to consider in determining whether plaintiff's perception of the reason or reasons for his transfer was not unfounded. The WCAC's analysis regarding whether plaintiff's belief that his transfer was related to Asher's request that he do personal work for him on company time was founded and consideration of plaintiff's subjective knowledge of he financial condition of the plant were not improper.

Defendant next argues that the WCAC erred in finding that defendant's employment aggravated his mental condition in a "significant manner." MCL 418.301(2) provides that mental disabilities "shall be compensable if contributed to or aggravated or accelerated by the employment in a significant manner." "The significant manner requirement now forces a claimant to actually prove a significant factual causal connection between the actual events of employment and the mental disability." *Gardner*, *supra* at 46-47, rev'd in part on other grounds 465 Mich 732 (2002). As stated in *Gardner*, *supra* at 47:

> The analysis must focus on whether actual events of employment affected the mental health of the claimant in a significant manner. This analysis will, by necessity, require a comparison of nonemployment and employment factors. Once actual employment events have been shown to have occurred, the significance of those events to the particular claimant must be judged against all

the circumstances to determine whether the resulting mental disability is compensable.

In the instant case, in addressing the "significant manner" issue, the WCAC stated:

> Even defendant's own expert, Dr. Mercier, on whose testimony the magistrate relied, opined that the work events would have some effect on plaintiff's underlying mental condition. Further, Dr. Mercier admitted that as time goes on and a psychiatrist has more familiarity with a patient, a diagnosis can change. Dr. Dabbagh has been treating plaintiff since his February 1995 hospitalization. He opined that there is a direct correlation between the psychiatric condition and plaintiff's inability to function and the incidents that happened at the job.
>
> Having established that work events actually occurred, and that plaintiff's perception of those events was not unfounded applying a reasonable person standard (i.e., an objective standard), a plaintiff's reaction to those events is to be reviewed under a subjective standard. *Gardner*, *supra*. While the medical experts may disagree as to what plaintiff's ultimate diagnosis is, they agree that his anger was a result of work events. His reaction to those events and his reasonable perception of those events was to become unable to function.
>
> In comparing the events of work, where plaintiff was to lose a position which gave him a great deal of pride and satisfaction, through no fault of his own, to the deaths of his family members who were only a source of disgust to him, it is clear that the work events were of more significance. [Footnotes omitted.]

We find no error in the above analysis. From a legal standpoint, as required by *Gardner*, the WCAC compared work-related and nonwork-related factors and balanced their relative significance. From a factual standpoint, there was evidence which suggests a "significant factual causal connection between the actual events of employment and the mental disability." *Gardner*, *supra* at 46-47. Plaintiff testified that he had not had psychiatric counseling before he began working for defendant and that he was "pretty stable" when he began working for defendant in 1974. Furthermore, there was expert medical testimony from Dr. Mamoun Dabbagh, a psychiatrist, who diagnosed plaintiff as suffering from major depression, single episode, possibly with psychotic features. In Dr. Dabbagh's opinion, plaintiff's conflict with his supervisor precipitated his episode of depression and anger and played a significant role in plaintiff's disabled state. In addition, there was evidence indicating that the timing of plaintiff's condition correlated with the timing of his transfer from the PQI department back to the assembly line. Therefore, given this Court's limited review of the WCAC's factual findings, we conclude that, under the "any evidence" standard, the WCAC's finding that plaintiff's mental condition was aggravated in a "significant manner" by plaintiff's employment should be deemed conclusive. *Mudel*, *supra* at 709.

Defendant also argues that the WCAC erred in its application of *Rakestraw v General Dynamics Land Systems, Inc*, 469 Mich 220; 666 NW2d 199 (2003). In *Rakestraw*, our Supreme Court held that a claimant attempting to establish a compensable, work-related injury must prove that the injury is medically distinguishable from a preexisting nonwork-related condition in order to establish the existence of a personal injury under MCL 418.301(1). *Id.* at 222. If a claimant

experiences symptoms that are consistent with the progression of a preexisting condition, the burden rests on the claimant to differentiate between the preexisting condition, which is not compensable, and the work-related injury, which is compensable. *Id.* at 231. The claimant has the burden of proving the existence of a work-related injury by a preponderance of the evidence. *Id.* at 230. In this case, the WCAC found that *Rakestraw* was inapplicable because "plaintiff had no psychiatric symptoms prior to the work-related events[.]" There was evidence, in the form of Dr. Dabbagh's expert testimony, which indicated that plaintiff's mental condition was due to a "single episode," that being the conflict at work. Such evidence suggests that plaintiff did not suffer from any preexisting, nonwork-related condition, which he was required to distinguish from his current condition. In light of the absence of evidence that plaintiff suffered from a preexisting, nonwork-related condition, we find that the WCAC did not err in concluding that *Rakestraw* was inapplicable to the facts of the case.

Last, defendant claims that the WCAC erred in its application of *Sington v Chrysler Corp*, 467 Mich 144; 648 NW2d 624 (2002), which addressed the definition of the term "disability" in MCL 418.301(4). The relevant definition of "disability" is as follows:

> As used in this chapter, "disability" means a limitation of an employee's wage earning capacity in work suitable to his or her qualifications and training resulting from a personal injury or work related disease. The establishment of disability does not create a presumption of wage loss. [MCL 418.301(4).]

In *Sington*, our Supreme Court interpreted this definition to mean:

> As this language plainly expresses, a "disability" is, in relevant part, a limitation in "wage earning capacity" in work suitable to an employee's qualifications and training. The pertinent definition of "capacity" in a common dictionary is "maximum output or producing ability." *Webster's New World Dictionary* (3d College ed). Accordingly, the plain language of MCL 418.301(4) indicates that a person suffers a disability if an injury covered under the WDCA results in a reduction of that person's maximum reasonable wage earning ability in work suitable to that person's qualifications and training. [*Sington*, *supra* at 155.]

The Court further stated, "[i]f the employee is no longer able to perform any of the jobs that pay the maximum wages, given the employee's training and qualifications, a disability has been established under § 301(4)." *Id*. at 157. The Court also noted that "the focus of the inquiry is not on every single job suitable to an employee's qualifications and training—only those that produce the maximum income." *Id*. at 160.

In addressing this issue below, the WCAC stated that because both parties' medical experts agreed that plaintiff is totally disabled, *Sington* was inapplicable. Defendant claims that the WCAC's conclusion regarding the applicability of *Sington* was improper because whether plaintiff suffers from a disability is an economic, not medical, issue. We agree with defendant's contention that disability is an economic issue because it essentially depends upon plaintiff's wage earning capacity despite his condition. However, in this case, the expert testimony of Dr. Dabbagh provides sufficient evidence to resolve the economic issue. Dr. Dabbagh testified that plaintiff could not return to work in "any capacity." If plaintiff cannot return to work in "any capacity," then, the universe of jobs which plaintiff cannot perform includes those for which

plaintiff is qualified and trained and which pay maximum wages. Therefore, there is evidence that as a result of his mental condition, plaintiff lacks any wage earning capacity, and is disabled under both MCL 418.301(4) and *Sington*. To the extent that the trial court erred in concluding that *Sington* did not apply, any error in this regard was harmless because Dr. Dabbagh's testimony established that plaintiff was disabled as the term is defined in *Sington*.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Kirsten Frank Kelly
/s/ Stephen L. Borrello